

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN DIANE RICE**, on March 9, 2005 at 9:00 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Diane Rice, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Ron Stoker, Vice Chairman (R)
Rep. Arlene Becker (D)
Rep. Robyn Driscoll (D)
Rep. George Everett (R)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Roger Koopman (R)
Rep. Michael Lange (R)
Rep. Tom McGillvray (R)
Rep. Mark E. Noennig (R)
Rep. Art Noonan (D)
Rep. John Parker (D)
Rep. Jon Sonju (R)
Rep. John Ward (R)
Rep. Bill Wilson (D)
Rep. Jeanne Windham (D)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Pam Schindler, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SB 122, 139, 141, 196, 3/2/2005
Executive Action: SB 141-Do Concur In

HEARING ON SB 141

Sponsor: SEN. RICK LAIBLE, SD 44, VICTOR

Opening Statement by Sponsor:

SEN. RICK LAIBLE (R), SD 44, opened the hearing on SB 141, Revise allowable wording on a "Notarial Seal."

{Tape: 1; Side: A; Approx. Time Counter: 0 - 27}

Proponents' Testimony:

Mark Simonich, Secretary of State, rose in support of SB 141 and stated that this is a "housekeeping" bill.

{Tape: 1; Side: A; Approx. Time Counter: 27 - 41}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. WARD posed this question to Mr. Simonich; "Why was this language changed in the first place?" Mr. Simonich replied, "It was part of an effort to update the laws of notaries."

{Tape: 1; Side: A; Approx. Time Counter: 41 - 53}

Closing by Sponsor:

SEN. LAIBLE closed the hearing on SB 141.

{Tape: 1; Side: A; Approx. Time Counter: 53 - 57}

HEARING ON SB 139

Sponsor: SEN. JOHN ESP, SD 31, BIG TIMBER

Opening Statement by Sponsor:

SEN. JOHN ESP (R), SD 31, opened the hearing on SB 139, Review and modification of child support orders. The SENATOR explained to the committee members that SB 139 would repeal a statute that was voted on and passed during the 2001 Legislative Session regarding the Schubert decision. The language for the "meat" of the bill is on Page 12, Section 5.

{Tape: 1; Side: A; Approx. Time Counter: 57 - 97}

Proponents' Testimony:

Lonnie Olson, child support enforcement, Department of Public Health and Human Services, rose in support of SB 139. **Mr. Olson** stated that this bill would allow the agency to modify child support enforcement procedures in a more timely manner. In 2004, 3,000 orders for child support were modified. According to Mr. Olson, the Federal Government requires that all modifications to child support orders must be completed in 180 days.

Mr. Olson informed the committee that SB 139 will do the following things:

- 1) Would eliminate the registration to modify the child support orders in District Court initially.
- 2) Would change the "service of process."
- 3) Would eliminate the requirement that a Montana Court approve the child support orders from another state.

{Tape: 1; Side: A; Approx. Time Counter: 97 - 190}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor:

SEN. ESP closed the hearing on SB 139.

{Tape: 1; Side: A; Approx. Time Counter: 190 - 220}

EXECUTIVE ACTION ON SB 141

(Please Note: REPS. LANGE, PARKER and GUTSCHE absent from the room.)

Motion/Vote: REP. DRISCOLL moved that SB 141 BE CONCURRED IN. Motion carried unanimously by voice vote. (REPS. LANGE, PARKER and GUTSCHE voted by proxy vote.)

Motion/Vote: REP. DRISCOLL moved that SB 141 BE PLACED ON THE CONSENT CALENDAR. Motion carried unanimously by voice vote. (REPS. LANGE, PARKER and GUTSCHE voted by proxy vote.)
{Tape: 1; Side: A; Approx. Time Counter: 220 - 235}

HEARING ON SB 196

Sponsor: SEN. MICHAEL WHEAT, SD 32, BOZEMAN

Opening Statement by Sponsor:

SEN. MIKE WHEAT (D), SD 32, opened the hearing on **SB 196**, Prohibit order concealing public hazards. **SEN. WHEAT** explained SB 196 to the committee as a measure that would prohibit parties from entering into a judgement that conceals a public hazard.

The stipulations would be:

- 1) To not apply to trade secrets.
- 2) To not apply to information that is confidential under State or Federal law.
- 3) To not apply to health care providers.

{Tape: 1; Side: A; Approx. Time Counter: 235 - 368}

Proponents' Testimony:

Richard Barber, self, rose in very strong support of SB 196. **Mr. Barber** was the father of a nine-year-old boy, "Gus" who was killed with a firearm that was defective.

Mr. Barber informed the committee members about the 23 other states that have some sort of "Anti-Secrecy" statute. He continued to explain why he is so adamant about this legislation, the confidential information regarding defective products that he has been able to obtain and the need for public awareness in this matter.

EXHIBIT(juh52a01)

{Tape: 1; Side: A; Approx. Time Counter: 368 - 500}

{Tape: 1; Side: B; Approx. Time Counter: 0 - 184}

Al Smith, Montana Trial Lawyers Association, rose in support of SB 196 and spoke to the committee about the secrecy issue that surrounds consumer products that the general public is not aware of or is not protected from.

EXHIBIT(juh52a02)

{Tape: 1; Side: B; Approx. Time Counter: 184 - 456}

Chris Tweeten, Chief Civil Prosecutor, Attorney General's Office, rose in support of SB 196 on behalf of Attorney General, Mike McGrath.

{Tape: 1; Side: B; Approx. Time Counter: 456 - 485}

Anita Roessmann, Montana Advocacy Association, Brain Injury Association, rose in support of SB 196 and spoke to the committee about the incidents where medication information is not fully disclosed to the recipient.

EXHIBIT(juh52a03)

{Tape: 1; Side: B; Approx. Time Counter: 485 - 500}

{Tape: 2; Side: A; Approx. Time Counter: 0 - 20}

Opponents' Testimony:

John Alke, Montana Defense Trial Lawyers Association, rose in opposition to SB 196. **Mr. Alke** spoke to the committee about the process that all litigation must proceed through and the highly public manner in which litigation is completed.

Mr. Alke addressed the matter of discovery that happens when there is litigation and how this bill would influence that process. He finished his testimony by stating that SB 196 will benefit the attorneys and society will be the parties that will suffer.

{Tape: 2; Side: A; Approx. Time Counter: 20 - 137}

Mona Jamison, General Motors, rose in opposition to SB 196. **Ms. Jamison** stated that SB 196 would allow, prior to the judge rendering a decision, the media to litigate to retrieve confidential information. She continued to explain to the committee members the process of "discovery/depositions" and the manner in which confidentiality is protected within those documents.

{Tape: 2; Side: A; Approx. Time Counter: 137 - 315}

Webb Brown, Montana Chamber of Commerce, also rose in opposition to SB 196 and proceeded to state, "This bill will take away choice from the public and will effect every business in Montana, not the huge manufacturers like General Motors and Remington."

{Tape: 2; Side: A; Approx. Time Counter: 315 - 345}

Kristi Blazer, Johnson and Johnson Company, stood in opposition to SB 196 and stated to the committee that the language in this bill could be a "fishing expedition" to gather information.

{Tape: 2; Side: A; Approx. Time Counter: 345 - 386}

Informational Testimony: None

Questions from Committee Members and Responses:

REP. CLARK asked Mr. Smith to explain to the committee the process of a lawsuit.

Mr. Smith began his explanation to the committee of the discovery process and how the media would pertain to SB 196.

REP. CLARK then spoke with the sponsor, **SEN. WHEAT**, about the hazardous products litigation and the unsealing of court records.

REP. NOONAN spoke with the **SENATOR** also about Page 1, Line 22, regarding any court orders, written or oral. The **REPRESENTATIVE** asked, "...why not take the language out regarding trade secrets?" **SEN. WHEAT** replied, "Who would make the decision whether or not they [trade secrets] are part of the litigation." They continued their conversation about challenging a judge's decision and the appellant process.

REP. NOENNIG queried **SEN. WHEAT** about the discovery process and when that information would be released; could language be added to SB 196 to read after the "written final settlement agreement." **SEN. WHEAT** replied, "Yes." They continued to discuss the language regarding public hazard and a judge's declaratory judgement.

REP. NOENNIG questioned Mr. Alke about the three amendments that are proposed regarding the declaratory judgement language.

REP. LANGE posed numerous questions to the sponsor regarding the New Section 1 and Section 3 regarding the language "that endangers public health," and who would determine that. **REP. LANGE** was also interested in why healthcare providers were exempted in SB 196. **SEN. WHEAT** referred the **REPRESENTATIVE** to Section 7, Line 6, "any person has standing for contesting a decision."

REP. SONJU questioned Mr. Alke regarding the release of information after the final settlement agreement.

REP. HARRIS began with his questions to Mr. Alke. The **REPRESENTATIVE** spoke to the discovery language regarding the non-filing of the document with the court. **Mr. Alke** responded that discovery when part of an exhibit can be reviewed. **Mr. Alke** continued with his explanation regarding the need for the documents to be produced back at the court; leading to a great expense for the person requesting those documents.

REP. HARRIS finished his questions by asking Mr. Barber, "...if the defective rifle information would have been disclosed, how would you have handled [it]?" **Mr. Barber** replied, "I would have had [the] rifle repaired or purchased another rifle."

Mr. Barber continued to inform the committee that Remington Company had known of problems with this product since the 1940's.

REP. RICE discussed with Mr. Smith whether or not SB 196 would increase the possibility of frivolous lawsuits. The REPRESENTATIVE related the recent story of the "Slip n Slide" product that was involved in litigation due to adults using the product which resulted in an adult breaking their neck.

REP. RICE asked at what point does a person accept their own responsibility for an accident that may occur. **Mr. Smith** replied, "...a jury will decide the person's percentage of responsibility and then the product's/corporate share of responsibility."

{Tape: 2; Side: A; Approx. Time Counter: 386 - 500}

{Tape: 2; Side: B; Approx. Time Counter: 0 - 500}

{Tape: 3; Side: A; Approx. Time Counter: 0 - 121}

Closing by Sponsor:

SEN. WHEAT closed the hearing on SB 196 and stated that this bill is about trying to make a public policy decision to keep the public safe from defective products. The SENATOR informed the committee that SB 817, U.S. Senate, "Sunshine Litigation Act" was passed on April 8, 2003 that addressed this issue.

EXHIBIT(juh52a04)

{Tape: 3; Side: A; Approx. Time Counter: 121 - 192}

HEARING ON SB 122

Sponsor: SEN. MICHAEL WHEAT, SD 32, BOZEMAN

Opening Statement by Sponsor:

SEN. MIKE WHEAT (D), SD 32, opened the hearing on **SB 122**, Regulate transfer of structured settlement payment rights and proceeded to explain each section of the bill to the committee members.

{Tape: 3; Side: A; Approx. Time Counter: 192 - 423}

Proponents' Testimony:

Patrick Driscoll, chief legal counsel, State Auditor's Office, rose as a proponent to SB 122. He informed the committee that he had been involved in the drafting of this bill and that this bill is based on the Model Act of Insurance Actuaries.

EXHIBIT(juh52a05)

{Tape: 3; Side: A; Approx. Time Counter: 423 - 487}

Les Marsh, Structural Settlement Company, rose in support of SB 122 and stated that this bill would allow a qualified sale of settlement monies which would be in the best interest of the client.

{Tape: 3; Side: A; Approx. Time Counter: 487 - 500}

Jacqueline Lenmark, American Insurance Association, American Life Insurers, American Council of Life Insurers, rose in support of SB 122 and stated that **Frank Cote, Farmers Union Insurance, John Cote, New York Life** are also in support of SB 122. **Ms. Lenmark** stated that originally she had signed in as an opponent due to the changes that had occurred in the bill, however; with the amendments approved, she would be a proponent.

{Tape: 3; Side: B; Approx. Time Counter: 0 - 36}

Al Smith, Montana Trial Lawyers, rose in support of SB 122.

{Tape: 3; Side: B; Approx. Time Counter: 36 - 41}

Don Allen, Montana Insurance and Financial Advisers, rose in support of the original bill.

{Tape: 3; Side: B; Approx. Time Counter: 41 - 52}

Chris Gallus, National Association of Settlement Purchasers, rose in support and would also support the amendment. He stated that 38 other states have similar statutes and that a 40% excise tax should not be required to be paid.

{Tape: 3; Side: B; Approx. Time Counter: 52 - 88}

Opponents' Testimony:

Greg VanHorsen, rose in support of SB 122 with the amendment inserted and stated that this bill would bring uniformity in consumer protection.

{Tape: 3; Side: B; Approx. Time Counter: 88 - 106}

Larry Kibbee, Property Casualty Insurance of America, rose in support and was in agreement with Mr. VanHorsen's comments.

{Tape: 3; Side: B; Approx. Time Counter: 106 - 115}

Informational Testimony: None

Questions from Committee Members and Responses:

REP. EVERETT questioned **SEN. WHEAT** about New Section 4, Page 4, Line 24 as it pertains to "responsible administration authority."
SEN. WHEAT referred to Page 2, Line 22 in his explanation.

REP. NOENNIG spoke with Ms. Lenmark regarding the amendments.
Ms. Lenmark referred to approximate nine amendments ranging from Page 1, Line 22 to Page 5, Line 16.

REPRESENTATIVE MCGILLVRAY spoke with the sponsor regarding Page 4, "in the best interest of the payee" and the various situations that may arise.

Mr. MacMaster explained the amendments as to the involvement of Worker's Compensation, the lump sum clauses and the transfer rights.

{Tape: 3; Side: B; Approx. Time Counter: 115 - 333}

Closing by Sponsor:

SEN. WHEAT closed the hearing on SB 122 and stated that this bill would protect injured people who have entered into settlements.

EXHIBIT(juh52a06)

{Tape: 3; Side: B; Approx. Time Counter: 333 - 362}

ADJOURNMENT

Adjournment: 12:45 P.M.

REP. DIANE RICE, Chairman

PAM SCHINDLER, Secretary

DR/ps

Additional Exhibits:

EXHIBIT ([juh52aad0.TIF](#))